

Chapter 31
COMMUNITY ANTENNA TELEVISION SYSTEMS
REGULATIONS FOR THE VILLAGE OF LAKEWOOD

31.01	Title
31.02	Definitions
31.03	Amendments
31.04	Franchise Territory
31.05	Police Powers
31.06	Grant of Franchise
31.07	Franchise Acceptance
31.08	Transfer of Ownership or Control
31.09	Franchise Renewal
31.10	Franchise Fee
31.11	Revocation
31.12	Termination Procedures
31.13	Receivership, Condemnation and Foreclosure
31.14	Franchise Processing Costs
31.15	Authority for Use of Streets
31.16	Conditions on Use of Streets
31.17	Erection of Poles
31.18	Undergrounding
31.19	Relocation
31.20	Placement of Buildings
31.21	System Design and Construction
31.22	Construction Standards
31.23	Technical Standards
31.24	Standby Power
31.25	Override Capability
31.26	Interconnection
31.27	Services
31.28	Consumer Service Standards
31.29	Proof of Compliance
31.30	Subscriber Notice
31.31	Quality of Service
31.32	Tenant's Rights
31.33	Rights of Individuals
31.34	Continuity of Service
31.35	Identification of Employees
31.36	Records
31.37	Regulatory Authority
31.38	Regulatory Responsibility
31.39	Public Usage of the System
31.40	Rates
31.41	Performance Review
31.42	System Review
31.43	Annual Reports
31.44	System Survey Reports
31.45	Complaint File and Reports
31.46	Other Reports and Inspections
31.47	Remedies for Franchise Violations

- 31.48 Procedure for Remedying Franchise Violations
- 31.49 Excuse of Nonperformance
- 31.50 Construction Bond
- 31.51 Performance Bond
- 31.52 Security Fund
- 31.53 Work Performed by Others
- 31.54 Grantee Insurance
- 31.55 Indemnity
- 31.56 Alternative Remedies
- 31.57 Nonenforcement
- 31.58 Compliance with Law
- 31.59 Unauthorized Reception, Use or Sale of Cable Service
- 31.60 Waiver or Exemption
- 31.61 Section Titles

31.01 **TITLE**

This Chapter 31 of the Village shall be known and may be cited as the Lakewood Cable Television Ordinance of 1995 (the "Ordinance").

31.02 **DEFINITIONS**

The following words shall have the meaning set forth in this Section unless the context shall clearly require otherwise:

Act or Cable Act: the Cable Communications Policy Act of 1984 (47 USC 521 et seq.) as amended by the Cable Television Consumer Protection and Competition Act of 1992.

Basic Cable Service: any service tier which includes, at a minimum, the transmission of local television broadcast signals, and any other television signals other than superstations.

Basic Cable Equipment: the equipment used by subscribers to receive the basic service tier, including, but not limited to, converter boxes, remote controls, connections for additional television sets and cable home wiring.

Broadcast Services: a broad category of programming which is received from broadcast television, low-power television and radio stations and is capable of being received in the Village.

Cable Communication System or System, also referred to as Cable Television System, Cable System, CATV System or Community Antenna TV System: a facility consisting of a set of closed transmission paths and associated signal generation, reception and control equipment, that is designed to provide Cable Service, which includes video programming and which is provided to multiple subscribers within a community, but such term does not include:

1. A facility that serves only to retransmit the television

signals of one or more television broadcast stations;

2. A facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control, or management, unless such facility uses any public right-of-way;
3. A facility of a common carrier, except that such facility shall be considered a Cable System to the extent such facility is used in the transmission of video programming directly to subscribers; or
4. Any facilities of any electric utility used solely for operating its electric utility System.

Cablecast Signal: a signal that originates within the facilities of the Cable Communications System.

Cable Service: the total of the following:

1. The one-way transmission to subscribers of video programming or other programming services; and
2. Subscriber interaction, if any, which is required for the selection of such video programming or other programming service.

Channel or Cable Channel: a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel as defined by the FCC.

Commence Construction: the time and date when construction of the Cable Communications System is considered to have commenced, which shall be when the first connection is physically made to a utility pole, or undergrounding of cables is initiated, after preliminary engineering (including strand mapping) and after all necessary permits and authorizations have been obtained.

Commence Operation: that time and date when operation of the Cable Communications System is considered to have commenced which shall be when sufficient distribution facilities have been installed so as to permit the offering of full services to a dwelling unit located within the Service Area.

Commercial Use Channel(s): the channel capacity designated for commercial use as defined and required by federal law.

Completion of Construction: that point in time when all distribution facilities specified in the Franchise Agreement have been installed by the Grantee so as to permit the offering of Cable Service to all of the potential subscribers in the Service Area, as well as the provision, in an operational state, of any facilities

required by the Franchise Agreement.

Control or Controlling Interest: actual working control or ownership of a Village Cable System in whatever manner exercised. A rebuttable presumption of the existence of control or a controlling interest shall arise from the beneficial ownership, directly or indirectly, by any person or entity (except underwriters during the period in which they are offering securities to the public) of 5 percent or more of a Cable System or the franchise under which the System is operated. A change in the control or controlling interest of an entity which has control or a controlling interest in a Grantee shall constitute a change in the control or controlling interest of the Cable System under the same criteria. Control or controlling interest as used herein may be held simultaneously by more than one person or entity.

Converter: an electronic device which converts signal carriers from one form to another.

Developed Parcel: any area of the Village where there is a density of at least 20 occupied homes per mile to be served by either aerial cable plants or by cable underground plants as measured from the closest cable television distribution facility.

Dwelling Unit: any individual or multiple residential place of occupancy.

FCC: the Federal Communications Commission and any legally appointed or elected successor.

Franchise: the right granted through a Franchise Agreement between the Village and a person by which the Village authorizes such person to erect, construct, reconstruct, operate, dismantle, test, use and maintain a System in the Village.

Franchise Agreement: a contractual agreement entered into between the Village and any Grantee hereunder which is enforceable by Village and said Grantee and which sets forth the rights and obligations between Village and said Grantee in connection with the franchise.

Franchise Fee: any assessment imposed hereunder by the Village on a Grantee solely because of its status. The term "Franchise Fee" does not include:

1. Any tax, fee, or assessment of general applicability (including any such tax for or assessment imposed on both utilities and cable operators or their services, but not including a tax, fee or assessment which is unduly discriminatory against Grantee;
2. Capital costs which are required by the franchise to be

incurred by Grantee for educational or governmental access facilities;

3. Requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties or liquidated damages; or
4. Any fee imposed under Title 17, United States Code.

Grantee: shall mean any person granted a franchise hereunder, its agents, employees or subsidiaries.

Grantor: the Village.

Gross Revenues: all cash, credits, property of any kind or nature or other consideration derived directly or indirectly by a Grantee, its subsidiaries, or any other person in which the Grantee has a financial interest or which has a financial interest in the Grantee arising from or attributable to operation of the System, including, but not limited to:

1. Revenue from all charges for services provided to subscribers of entertainment and non-entertainment services including late fees, and downgrading charges;
2. Revenue from all charges for the insertion of commercial advertisements upon the System;
3. Revenues from all charges for leased access or use of studios;
4. Revenue from all charges for the Installation, connection and reinstatement of equipment for utilization of the System and provision of subscriber and other services;
5. Revenue from the sale, exchange or use or cablecast of any programming developed on the System for community or institutional use;
6. In value at retail price levels, the value of any capital assets of depreciable value received by the Grantee or others described above in consideration of the performance of any advertising or other service on the System; provided, however, that the value of joint promotions between the Grantee and other local media shall not be included; and
7. Revenue from home shopping channels.

Initial Service Area: the area of the Village which will receive service initially, as set forth in the Franchise Agreement.

Installation: the connection of the System from feeder cable to subscribers, terminals, and the initial provision of service.

Leased Access: the use of the System by any business enterprise or other entity whether profit, nonprofit or governmental, to render services to the citizens of the Village, and shall include, without limitation, all use pursuant to Section 532 of the Act.

Local Origination Channel: any channel where the Grantee or its designated agent is the primary programmer, and provides locally-produced video programs to subscribers.

Normal Business Hours, as applied to the Grantee: those hours during which similar businesses in the Village are open to serve customers. In all cases, Normal Business Hours must include some evening hours at least one night per week, and/or some weekend hours.

Normal Operating Conditions: those service conditions which are within the control of the Grantee. Those conditions which are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages and severe or unusual weather conditions. Those conditions which are ordinarily within the control of the Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.

Person: any individual, firm, corporation, limited liability company, partnership, association, joint venture or organization of any kind and the lawful trustee, successor, assignee, transferee or Personal representative thereof.

Public/Education/Government Access Facilities or PEG Access Facilities: the total of the following:

1. Channel capacity designated for public, educational or governmental use; and
2. Facilities and equipment for the use of such channel capacity.

Resident: any person residing in the Village as otherwise defined by applicable law.

School: any public or private elementary school, secondary school, junior college, college or university which conducts classes or provides instructional services and which has been granted a certificate of recognition by the State of Illinois.

Service Area: the entire geographic area within the Village designated in a Franchise Agreement to receive Cable Service.

Service Interruption: the loss of picture or sound on one or more cable channels.

Street: the surface of and the space above and below any public street, road, highway, freeway, easement, lane, path, alley, court, sidewalk, parkway, driveway or other public way now or hereafter existing as such within the Village.

Subscriber: any person who legally receives any one or more of the services provided by the System.

31.03 **AMENDMENTS**

The Village reserves the right to amend this Ordinance or any Franchise Agreement granted pursuant to this Ordinance. Any such amendments shall be in writing.

31.04 **FRANCHISE TERRITORY**

A franchise granted under this Ordinance is for the territorial limits of the Village as they may exist now and in the future.

A. Grantee shall offer service to all residents and public buildings within the franchise territory, without regard to the race, religion, national origin, income, disability status, age or gender of the subscriber. Further, the Grantee may offer services to commercial areas within the Village.

B. Grantee shall offer service at equal rates, and on an equal basis with regards to deposits and service packages, to all Residents. Grantee may, however, discontinue or refuse service to subscribers and potential subscribers who have not paid applicable charges. Further, the Grantee may offer special services or rates to senior citizens, or services to commercial subscribers at rates different from those charged residential subscribers, which shall include, but not be limited to, charges for installation on a time and material basis. The Grantee may also enter into separate contracts with multiple dwelling unit buildings and may charge discounted rates for services based upon single point billing or other contractual considerations. This section does not preclude the Grantee from offering promotional rates for service introductions or temporary promotional discounts.

31.05 **POLICE POWERS**

Nothing in this Ordinance or in any Franchise Agreement hereunder shall be construed as an abrogation by the Village of any of its police powers.

31.06 **GRANT OF FRANCHISE**

A. Application: All applicants for a franchise under this

Ordinance shall prepare and file a written application with the Village in such form as the Village shall designate.

B. Review of Application: Upon receipt of an application under this section, the Village shall review the same and make the application available for public inspection at Village Hall. A decision shall be made on the application by the Village after evaluation thereof. The Village may grant one or more franchises, or may decline to grant any franchise.

C. Franchise Required: Subject to federal and state law, no Cable System shall be allowed to occupy or use the streets in the Service Area or be allowed to operate without a franchise granted in accordance with the provisions of this Ordinance.

D. Franchise Nonexclusive: Any franchise granted under this Ordinance shall be nonexclusive pursuant to Section 62 (a) of the Cable Act. Furthermore, pursuant to Section 62 (f) (2) of the Act, the Grantee shall not be required to secure a franchise in order to operate as a multichannel video programming distributor.

E. Franchise Requirements: Grantor may establish appropriate requirements for new franchises or franchise renewals pursuant to Federal and State law, and may modify these requirements from time to time to reflect changing conditions and technology in the cable industry.

F. Grant: In the event the Grantor shall grant to a Grantee or renew a nonexclusive, revocable franchise to construct, operate, maintain and reconstruct a Cable System within the Service Area, said franchise shall constitute both a right and an obligation to provide the service of a Cable System as required by this Ordinance and the terms of the Franchise Agreement. A Grantee's application shall be incorporated by reference into the Franchise Agreement.

G. Conflict with Federal or State Laws: Any franchise granted under this Ordinance shall be consistent with federal laws and regulations and state general laws and regulations. In the event of a conflict between the terms and conditions of the Franchise Agreement and the terms and conditions of federal or state law under which Grantor can grant a franchise, except where the application of such federal or state law would impose inconsistent or additional material obligations or duties upon Grantee, such general law or requirements shall control.

H. Ordinance Revisions: Any franchise granted under this Ordinance is hereby made subject to any revisions of this Ordinance and the general ordinances of the Village, provided that such revisions do not materially alter or impair the obligations of Grantee set forth in any Franchise Agreement.

I. Term: The term of any new or renewal franchise granted

under this Ordinance shall be established in the Franchise Agreement, provided that in no event shall any franchise granted under this Ordinance exceed the term of 15 years.

J. Other Licenses or Permits: A franchise granted under this Ordinance shall not take the place of any other license or permit legally required of a Grantee.

K. Franchise Revocable: Any franchise granted under this Ordinance shall be revocable pursuant to Section 31.11.

31.07 **FRANCHISE ACCEPTANCE**

A. To accept a franchise granted under this Ordinance a Grantee must file any required bonds, funds and proof of insurance, as well as written notice of acceptance with the Village Clerk within 45 days of the effective date of the Franchise Agreement.

B. Written notice required under Section 31.07-A shall include a certification that the Grantee:

1. Will comply with this Ordinance, any Franchise Agreement made pursuant to this Ordinance and all applicable federal, state and local laws and regulations in regard to the construction, operation and maintenance of a Cable System;
2. Accepts the franchise relying on the power and authority of the Village to grant the franchise and the terms and conditions thereof;
3. Acknowledges that it has not been induced to enter into the franchise by any understanding or promise or by other statement, whether written or verbal, by or on behalf of the Village or by any other third person concerning any term or condition of the franchise or Ordinance not expressed herein;
4. Shall have no recourse whatsoever against the Village for any loss, cost, expense or damage arising out of any provision or requirement of a franchise or the enforcement thereof, or for the failure of the Village to have authority to grant any or all parts of the franchise;
5. Agrees that, in the event of any conflict between this Ordinance and the Franchise Agreement, the terms of the Franchise Agreement shall prevail; and
6. Will not at any time claim in any proceeding involving the Village that any condition or term of the franchise or this Ordinance is unreasonable,

arbitrary or vague, or that the Village had no power or authority to make any such term or condition, but shall accept the validity of the terms and conditions of the franchise and Ordinance in their entirety.

C. A Grantee of a Franchise accepted or transferred shall, at the time of acceptance of the Franchise, pay to the Village any and all fees incurred by or charged to the Grantor by an engineer, planner, attorney, economist or other technical or professional expert in assisting the Grantor. The amount of such payment may be considered as reimbursement for administrative costs incurred before the granting or transferring of the franchise. *Amended, 1997-9*

D. A Grantee of a renewed franchise shall, at the time of acceptance of the franchise, pay to the Village any and all lawful and incidental fees incurred by or charged to the Village for renewal of the franchise. *Added by 1997-9*

31.08 **TRANSFER OF OWNERSHIP OR CONTROL**

A. **Transfer of Franchise:** Any franchise granted under this Ordinance shall be a privilege to be held for the benefit of the public. Any franchise so granted cannot, in any event, be sold, transferred, leased, assigned or disposed of, including, but not limited to, by forced or voluntary sale, merger, consolidation, or other means, without the prior written consent of the Grantor, and then only under such reasonable conditions as the Grantor may establish. Such consent as required by the Grantor, shall be given or denied no later than 120 days following any request, and shall not be unreasonably withheld. Prior consent shall not be required when transferring the franchise between wholly-owned subsidiaries of the same entity.

B. **Ownership or Control:** The Grantee shall promptly notify in writing the Grantor of any proposed change in, or transfer of, or acquisition by any other party of, control of the Grantee. A rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or transfer by any person or group of persons consisting of five percent or more of the beneficial ownership interest of the Grantee. Every change, transfer, or acquisition of control of the Grantee shall make the franchise subject to cancellation unless and until the Grantor shall have consented in writing thereto, which consent shall be given or denied no later than 120 days following any request, and shall not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, the Grantor may inquire into the qualifications of the prospective controlling party, and the Grantee shall assist the Grantor in any such inquiry. In seeking the Grantee's consent to any change in ownership or control, the Grantee shall have the responsibility:

1. To show to the satisfaction of the Grantor whether the proposed purchaser, transferee, or assignee (the "proposed transferee"), which in the case of a corporation, shall include all directors and all persons having a legal or equitable interest of five percent or more of the voting stock:
 - a. Has ever been convicted or held liable for acts involving moral turpitude including, but not limited to, any violation of federal, state or local law or regulations, or is presently under an indictment, investigation or complaint charging such acts;
 - b. Has ever had a judgment in an action for fraud, deceit or misrepresentation entered against it, her, him or them by any court of competent jurisdiction; or
 - c. Has pending any legal claim, lawsuit or administrative proceeding arising out of or involving a Cable System.
2. To establish, to the satisfaction of the Grantor, the financial solvency of the proposed transferee by submitting all current financial data for the proposed transferee which the Grantee was required to submit in its franchise application, and such other data as the Grantor may request, where the same are audited, certified and qualified by a Certified Public Accountant.
3. To establish to the satisfaction of the Grantor that the financial and technical capability of the proposed transferee is such as shall enable it to maintain and operate the Cable System for the remaining term of the franchise under the existing franchise terms.

C. Any financial institution having a pledge of the franchise or its assets for the advancement of money for the construction and/or operation of the Cable System shall notify the Grantor that the financial institution or its designee, seeks to take control and operate the Cable System in the event of a Grantee default in its financial obligations. Such assumptions of control by the financial institution shall only occur upon prior written approval by the Grantor. Further, said financial institution shall also submit a plan for such operation that will ensure continued service and compliance with all franchise requirements during the term the financial institution exercises control over the System. The financial institution shall not exercise control over the System for a period exceeding one year unless extended by the

Grantor in its discretion, but during said period of time it shall have the right to petition the Grantor to transfer the franchise to another Grantee. Except insofar as the enforceability of this subsection may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors rights generally, and further subject to applicable federal, state or local laws and regulations, if the Grantor finds that such transfer, after considering the legal, financial, character, technical and other public interest qualities of the proposed transferee, is satisfactory, the Grantor shall transfer and assign the right and obligations of such franchise as in the public interest. The consent of the Grantor to such transfer shall be given or denied no less than 120 days after any request, and shall not be unreasonably withheld.

D. The consent or approval of the Grantor to any transfer by the Grantee shall not constitute a waiver or release of the rights of the Grantor in and to the Streets, and any transfer shall by its terms, be expressly subject to the terms and conditions of any franchise.

E. In the absence of extraordinary circumstances, the Grantor shall not approve any transfer or assignment of the franchise prior to completion of initial construction of the Cable System.

F. In no event shall a transfer of ownership or control be approved without the successor in interest becoming a signatory of the Franchise Agreement.

G. Grantee shall agree that the Grantor may approve the transfer, deny the transfer with cause, or conditionally approve the transfer, provided that the Grantor shall not unreasonably refuse to approve the transfer or condition the transfer upon unreasonable conditions. The conditions the Grantor may attach to the transfer approval may include, but are not limited to: the reimbursement for any and all expenses and fees incurred by or charged to the Grantor by any engineer, planner, attorney, economist or other technical or professional expert assisting the Grantor in evaluating the transfer request, remedy of any existing or historical violations of Village ordinances or the Franchise Agreement; payment of all fees and penalties owed by the Grantee at the time of transfer approval; and agreement by the prospective new Grantee to abide by any and all ordinances, agreements and conditions placed upon the Franchise and System by the Grantor and existing Grantee, unless mutually removed by the Grantor and the Grantee. *Amended, 1997-9*

H. When the Grantee approves a transfer under this section, the new Grantee shall indicate acceptance of the franchise as specified in Section 31.07, including the filing of all necessary bonds, funds, proofs of insurance and certifications.

31.09 **FRANCHISE RENEWAL**

A. The Grantor may renew a franchise granted under this Ordinance if the Grantee files a written request for such a renewal pursuant to the terms of Section 626 of the Cable Act. At the time of such request, the Grantor may update this Ordinance and re-evaluate the needs of the community for Cable Service and the performance of the Grantee.

B. The Cable Act shall govern the procedures and standards for renewal of any franchise awarded pursuant to this Ordinance.

C. To the extent that the Cable Act is not applicable, the Grantor in its sole discretion and judgment shall have the right to grant, deny or conditionally grant renewal of a Franchise. *Amended, 1997-9*

D. Unless otherwise agreed upon, any amended cable ordinance or provision thereunder adopted before the franchise renewal shall take effect at the franchise renewal.

E. When the Grantor approves a franchise renewal, the Grantee shall accept the renewed franchise under the procedures set out in Section 31.07.

31.10 **FRANCHISE FEE**

A. Franchise Payment: A Grantee shall pay to the Grantor a fee in an amount as designated in the Franchise Agreement, which amount shall not be less than five percent of Grantee's gross revenues or such other maximum amount allowable by applicable law. Such payment shall commence as of the effective date of the franchise or any renewal date. The Grantee shall furnish, on an annual basis, a statement within 120 days of the close of the calendar year, either audited or certified by independent financial review, by an independent Certified Public Accountant or certified by a financial officer of the Grantee, reflecting the total amount of the revenue and all payments, deductions and computations for the period covered by the payment. Upon 10 days prior written notice, Grantor shall have the right to conduct an independent audit of Grantee's records, in accordance with Generally Accepted Accounting Procedures, and if such audit indicates a Franchise Fee underpayment of five percent or more, the Grantee shall pay to the Village all of the Village's costs of such an audit and shall pay to the Village, within 30 days after receiving such an audit, all underpayments. *Amended, 1997-9*

B. Acceptance by Grantor: No acceptance of any payment by the Grantor shall be construed as a release or as an accord and satisfaction of any claim the Grantor may have for further or additional sums payable as a Franchise Fee under this Ordinance or for the performance of any other obligations of the Grantee.

C. Failure to Make Required Payment: In the event that any franchise payment or recomputed amount is not made on or before the dates specified herein, Grantee shall pay an additional compensation:

1. An interest charge, computed from such due date, of 18 percent per annum during the period for which payment was due, and, in addition;
2. If the payment is late by 45 days or more, a sum of money equal to five percent of the amount due in order to defray those additional expenses and costs incurred by the Grantor by reason of delinquent payment.

D. Payment Schedule: The franchise fee shall be paid on a quarterly basis according to the following schedule: revenues for January through March shall be reflected in a May 15th payment; revenues for April through June shall be reflected in an August 15th payment; revenues for July through September in an November 15th payment; and revenues for October through December in a February 15th payment.

E. Pass Through: Any Grantee "pass through" or itemization of Franchise Fee costs on subscribers' bills, shall be in accordance with federal law.

31.11 **REVOCATION**

A. Grounds for Revocation: Grantee shall be given due notice and a reasonable opportunity to cure any alleged issues of non-compliance, the Grantor reserves the right to revoke any franchise granted hereunder and rescind all rights and privileges associated with the franchise upon a final finding of non-compliance in the following circumstances, each of which shall represent a default under this Ordinance and a material breach of the franchise:

1. If the Grantee shall default in the performance of any of its material obligations under this Ordinance or under such documents, agreements and other terms and provisions entered into by and between the Grantor and the Grantee, subject to the provisions on cure.
2. If the Grantee should fail to provide or maintain in full force and effect, the liability and indemnification coverages or the security fund or bonds as required herein.
3. If any court of competent jurisdiction, or any federal or state regulatory body by rules, decisions or other action, determines that any

material provision of the franchise documents, including this Ordinance, the Franchise Agreement and Grantee's proposal is invalid or unenforceable prior to the commencement of initial System construction.

4. If the Grantee ceases to provide service for a period exceeding 30 days for any reason within the control of the Grantee over the Cable System, or abandons the management and/or operation of the System.
5. If the Grantee willfully violates any of the material provisions of this Ordinance or the Franchise Agreement or attempts to practice any fraud or deceit upon the Grantor.
6. If the Grantee becomes insolvent, or upon listing of an order for relief in favor of Grantee in a bankruptcy proceeding.
7. If the Grantee transfers a controlling interest of the franchise without the prior approval or consent of the Grantor as required in Section 31.08.

B. Procedure Prior to Revocation:

1. The Grantor may make a written demand that the Grantee comply with any such requirement, limitation, term, condition, rule or regulation or correct any action deemed cause for revocation. Such written demand shall detail the exact nature of the alleged non-compliance. In the event the stated violation is not reasonably curable within 30 days, the franchise shall not be terminated or revoked, or damages assessed, if the Grantee provides within the said 30 days a plan, satisfactory to the Grantor, to remedy the violation. If the failure, refusal or neglect of the Grantee continues for a period exceeding 30 days following receipt of such written demand by the Grantee, the Grantor may terminate the Franchise Agreement in accordance with the procedures set forth in Section 31.12.
2. The Grantor shall hear any persons interested therein, and shall determine, within 90 days, based upon the preponderance of the evidence, whether the Grantee has committed a material breach of this Ordinance or the Franchise Agreement, and if so, whether such breach was willful.

3. If the Grantor determines that the Grantee has willfully committed a material breach, then the Grantor may, by resolution, declare that the franchise of such Grantee shall be terminated and security fund and bonds forfeited, or the Grantor may, at its option and if the material breach is capable of being cured by the Grantee, direct the Grantee to take appropriate remedial action within such time and manner and upon such terms and conditions as the Grantor shall determine are reasonable under the circumstances.

31.12 **TERMINATION PROCEDURES**

A. **Disposition of Facilities:** Subject to federal, state and local laws, in the event a franchise expires, is revoked, or otherwise terminated, the Grantor may order the removal of the above-ground System facilities from the Service Area within a reasonable period of time as determined by the Grantor or require the original Grantee to maintain and operate its Cable System for a period not to exceed 24 months as indicated in Section 31.12-D herein.

B. **Restoration of Property:** In removing its plant, structures and equipment, the Grantee shall refill, at its own expense, any excavation that shall be made by it and shall leave all public ways and places in a condition as that which prevailed prior to the Grantee's removal of its plant, structures and equipment without affecting the electrical or telephone cable wires, or attachments. The Grantee's insurance, indemnity obligations, performance bond(s) and security fund(s) required by this Ordinance and by the Franchise Agreement, shall continue in full force and effect during the period of removal and until full compliance by the Grantee with the terms and conditions of this Section 31.12.

C. **Restoration by Grantor, Reimbursement of Costs:** In the event of a failure by the Grantee to complete any work required by Section 31.12-A and/or Section 31.12-B, or any other work required by Grantor by law or ordinance, within 30 days after receipt of written notice, and to the satisfaction of the Grantor, the Grantor may cause such work to be done and the Grantee shall reimburse the Grantor the cost thereof within 30 days after receipt of an itemized list of such costs or the Grantor may recover such costs through the security fund or bonds provided by Grantee. The Grantor shall be permitted to seek legal and equitable relief to enforce the provisions of this Section 31.12.

D. **Extended Operation:** Subject to federal, state and local law, upon either the expiration or revocation of a franchise, the Grantor may require the Grantee to continue to operate the Cable System for a defined period of time not to exceed 24 months from

the date of such expiration or revocation. The Grantee shall, as trustee for its successor in interest, continue to operate the Cable Communications System under the terms and conditions of this Ordinance and the Franchise Agreement and to provide the regular Cable Service and any of the other services that may be provided at that time.

E. Grantor's Right Not Affected: The termination and forfeiture of any franchise shall in no way affect any of the rights of the Grantor under any provision of law.

31.13 **RECEIVERSHIP, CONDEMNATION AND FORECLOSURE**

A. Operation by Receiver: Any franchise granted shall, at the option of the Grantor, cease and terminate 120 days after the appointment of a receiver or receivers or trustee or trustees designated to take over and conduct the business of the Grantee, whether in a receivership, reorganization, condemnation, bankruptcy or other action or proceeding unless such receivership or trusteeship shall have been vacated prior to the expiration of said 120 days, or unless:

1. Such receivers or trustees shall have, within 120 days after their election or appointment, fully complied with all the terms and provisions of this Ordinance and the franchise granted pursuant hereto, and the receivers or trustees within said 120 days shall have remedied all defaults under the franchise; and,
2. Such receivers or trustees shall, within said 120 days, execute an agreement duly approved by the court having jurisdiction in the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of the Franchise Agreement.

B. Involuntary Sale: In the case of a foreclosure or other involuntary sale of the plant, property and equipment of the Grantee, or any part thereof, the Grantor may serve notice of termination upon the Grantee and to the purchaser at such sale, in which event the franchise and rights and privileges of the Grantee hereunder shall cease and terminate 30 days after service of such notice, unless:

1. The Grantor shall have approved the transfer of the franchise, as and in the manner provided in this Ordinance; and
2. Such successful purchaser shall have covenanted and agreed with the Grantor to assume and be bound by all the terms and conditions of the Franchise

Agreement.

31.14 **FRANCHISE PROCESSING COSTS**

A. New Franchises: For the award of a new franchise, the costs to be borne by the Grantee shall include, but shall not be limited to, all costs of publication of notices prior to any public meeting, development and publication of relevant ordinances and Franchise Agreement, fees and any cost not covered by the application fees, incurred by the Grantor in its study, preparation of proposal solicitation documents, evaluation of all applications, including, but not limited to, consultant and attorneys fees.

B. Franchise Transfer: For a franchise transfer, Grantee, and/or the approved transferee, shall reimburse Grantor for its processing costs as provided by the agreement approving the transfer.

C. Other Costs: The processing costs provided for in this Section shall be in addition to any other inspection or permit fee or other fees due to Grantor under any other ordinance.

31.15 **AUTHORITY FOR USE OF STREETS**

A. Use of Streets: For the purposes of operating and maintaining a System in the Village, Grantee may erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, across and along the streets within the Village lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of the System, provided that all applicable permits are applied for and granted, all fees paid and all other Village codes and ordinances otherwise complied with. However, no rights hereunder may be transferred by Grantee to any other entity except Grantee's construction agents.

B. Filing Plans: Prior to construction or alteration, Grantee shall in each case, file plans with all appropriate Village departments and receive written approval of such plans, which approval shall not be unreasonably withheld. Grantee shall provide in writing a monthly progress report to Village through the completion of construction or alteration.

C. Non-interference: Grantee shall construct and maintain the System so as not to interfere with other uses of streets. Grantee shall make use of existing poles and other facilities available to Grantee whenever practicable. Grantee shall individually notify all residents directly affected by proposed construction prior to the commencement of that work.

D. Denial of Use by Grantor: Notwithstanding the above grant to use the streets, no street shall be used by Grantee if the Village, in its sole opinion, determines that such use is inconsistent with the conditions or provisions by which such street

was created or dedicated, or presently used.

31.17 **CONDITIONS ON USE OF STREETS**

A. Limit Interference: All transmission and distribution, structures, lines and equipment erected by Grantee within the Village shall be so located as to cause minimum interference with the proper use of streets and other public places and the rights and reasonable convenience of property owners who adjoin such streets and other public places.

B. Restoration of Streets: In case of disturbance of any street or public place, the Grantee shall, at its own cost and expense and in a manner approved by the Village engineer, replace and restore such area in as good a condition as before the work involving such disturbance was done.

C. Tree Trimming: The Grantee shall comply with the provisions of the Village Tree Ordinance. Each Grantee shall be responsible for, shall indemnify, defend and hold harmless the Village and its officers, agents and employees from and against any and all damages arising out of or resulting from the removal, trimming, mutilation of or injury to any tree or trees proximately caused by the Grantee or its officers, agents, employees, contractors or subcontractors.

31.17 **ERECTION OF POLES**

A. Consent to Erection of Poles: No franchise shall be deemed to expressly or implicitly authorize the Grantee to construct or install poles or wire-holding structures within streets for the purpose of placing cables, wires, lines or otherwise without the written consent of the Grantor. Such consent shall be given upon such terms and conditions as the Village Engineer may prescribe, which shall include a requirement that the Grantee perform, at its sole expense, all tree trimmings required to maintain the poles clear of obstructions.

B. Access to Poles: With respect to any poles or wire holding structures which a Grantee is authorized to construct and install within streets, a public utility serving the Village may, if denied the privilege of utilizing such poles or wire-holding structures by the Grantee, apply for such permission to the Village Engineer. If the Village Engineer finds that such use would enhance the public convenience and would not unduly interfere with the Grantee's operations, the Village Engineer may authorize such use subject to such terms and conditions as the Village Engineer deems appropriate. Such authorization shall include the condition that the public utility pay to the Grantee any and all actual and necessary costs incurred by the Grantee in permitting such use. Nothing herein shall be construed as a right for the Grantee to utilize public utility property.

31.18 **UNDERGROUNDING**

A. Underground Installation Required: Except as hereinafter provided, in all areas of the Village where the cables, wires and other like facilities of a public utility are placed underground, each Grantee shall construct and install its cables, wires and other facilities underground. Amplifier boxes and pedestal mounted terminal boxes may be placed aboveground if existing technology reasonably requires, but shall be of such size and design and shall be so located as not to be unsightly or unsafe. In any area of the Village where there are certain cables, wires and other like facilities of a public utility underground and at least one operable cable, wire or like facility of a public utility is suspended above the ground from poles, a Grantee may construct and install its cables, wires and other facilities from the same pole with permission of the Village engineer and the utility company which owns the pole.

B. Relocation Underground: With respect to any cables, wires and other like facilities constructed and installed by a Grantee aboveground, the Grantee shall, at its sole expense reconstruct and reinstall such cables, wires, or other facilities underground pursuant to any project under which the cables, wires or other like facilities of all like utilities are placed underground within an area.

31.19 **RELOCATION**

If, during the term of a franchise, the Village, a public utility, a sanitary district or any other similar special district elects to alter, repair, realign, abandon, improve, vacate, reroute or change the grade of any street or to replace, repair, install, maintain or otherwise alter any aboveground or underground cable, wire, conduit, pipe, line pole, wire-holding structure or other facility utilized for the provisions of utility or other services or transportation or drainage, sewage or other liquids, the Grantee shall, except as otherwise hereinafter provided, at its sole expense, remove or relocate as necessary its poles, wires, cables, underground conduits, manholes and any other facilities which it has installed. If such removal or relocation is required within the subdivision in which all utility lines, including those for the System, were installed at the same time, the entities may decide among themselves who is to bear the cost of relocating; provided, that the Village shall not be liable to a Grantee for such costs. Regardless of who bears the costs, a Grantee shall take action to remove or relocate at such reasonable time or times as are directed by the agency undertaking the work. Reasonable advance written notice shall be mailed to the Grantee advising the Grantee of the date or dates that the removal or relocation is to be undertaken.

31.20 **PLACEMENT OF BUILDINGS**

Each Grantee shall, upon request by any person holding a building moving permit or other approval issued by the Village, temporarily remove, raise or lower its wires to permit the movement of buildings. The expense of such removal, raising or lowering shall be paid by the persons requesting same, and a Grantee shall be authorized to require such payment in advance. A Grantee shall be given not less than 30 days written notice to arrange for such temporary wire changes.

31.21 **SYSTEM DESIGN AND CONSTRUCTION**

A. System Design: A Cable System shall be a minimum of 550 MHz bandwidth or its functional equivalent.

B. Coverage: Grantee shall design and construct the Cable System in such a manner as to have the capability to pass and service every dwelling and business, school or public agency within the Service Area. Service shall be provided to subscribers in accordance with the schedules and line extension policies specified in the Franchise Agreement. Cable System construction and provision of service shall be non-discriminatory, and Grantee shall not delay or deter service to any section of the Service Area on the grounds of economic preference.

C. Cablecasting Facilities and Channel Capacity: Grantee shall provide cable casting facilities and channel capacity in accordance with the requirements of the Franchise Agreement.

D. System Construction Schedule:

1. Grantee shall comply with the requirements of the System construction or upgrade schedule contained in the Franchise Agreement.
2. Grantee shall provide a detailed construction or upgrade plan indicating progress schedules, area construction maps, test plan, and projected dates for adding service. In addition, Grantee shall update this information on a monthly basis, by submitting a copy of its normal internal progress reports, showing specifically whether schedules are being met and the reason for any delays.

E. Provision of Service: After service has been established by activating trunk and distribution cables for any area, Grantee shall provide service to any requesting subscriber within the area within 30 days from the date of the request.

31.22 **CONSTRUCTION STANDARDS**

A. Each Grantee shall construct, install and maintain its System in a manner consistent and in compliance with all applicable laws, ordinances, construction standards, governmental requirements and technical standards equivalent to those established by the FCC. Each Grantee shall provide to the Village written reports of the grantee's annual proof of performance tests conducted pursuant to FCC standards and requirements.

B. Each Grantee shall at all times comply with the National Electrical Safety Code (established by the National Bureau of Standards); National Electrical Code; National Bureau of Fire Underwriters; applicable federal, state and local laws and regulations; and codes and other ordinances of the Village.

C. In any event, the System shall not endanger or interfere with the safety of persons or property within the Village or other areas where the Grantee may have equipment located.

D. All working facilities, conditions and procedures, used or occurring during construction and maintenance of the System, shall comply with the standards of the Occupational Safety and Health Administration.

E. Construction, installation and maintenance of the System shall be performed in an orderly and workmanlike manner, and in close coordination with public and private utilities serving the Village, following accepted construction procedures and practices and working through existing committees and organizations.

F. All cable and wires shall be installed, where possible, parallel with electric and telephone lines, and multiple cable configurations shall be arranged in parallel and bundled with due respect for engineering considerations.

G. Any antenna structure used in the System shall comply with construction, marking and lighting of antenna structures required by the United States Department of Transportation.

H. Signal leakage shall be checked at reception locations for emergency radio services so as to prove no interference signal combinations are possible.

I. Radiation shall be measured adjacent to any proposed aeronautical navigation or communication radio sites to prove no interference to air navigational reception.

31.23 **TECHNICAL STANDARDS**

A. Standards: The Cable Communications System shall meet all technical and performance standards contained in the Franchise

Agreement and as required by the FCC.

B. **Test and Compliance Procedure:** The Grantee shall submit, within 60 days after the effective date of the Franchise Agreement, a detailed test plan describing the methods and schedules for testing the Cable System on an ongoing basis to determine compliance with the provisions of the Franchise Agreement. The tests for Basic Cable Service shall be performed at intervals no greater than twelve months. The tests may be witnessed by representatives of the Grantor, and written test reports shall be submitted to the Grantor. If more than 10 percent of the locations tested fail to meet the performance standards, the Grantee shall be required to indicate what corrective measures have been taken, and the entire test shall be repeated. A second failure of more than 10 percent may be considered a breach of the Franchise Agreement.

C. **Special Tests:** At any time after commencement of service to subscribers, the Grantor may require additional tests, full or partial repeat tests, different test procedures or tests involving a specific subscriber's terminal. Requests for such additional tests will be made on the basis of complaints received or other evidence indicating an unresolved controversy or significant noncompliance, and such tests shall be limited to the particular matter in controversy. The Grantor shall endeavor to so arrange its requests for such special tests so as to minimize hardship or inconvenience to Grantee or to the subscriber.

D. **Costs of Tests:** The costs of all tests required under Sections 31.23-B and 31.23-C, and retesting as necessary, shall be borne by the Grantee, except that if Grantor requires the utilization of outside consultants or test personnel when such costs shall be borne by the Grantor.

31.24 **STANDBY POWER**

Each Cable System, in its entirety, shall include the equipment capable of providing two hours of standby powering for the distribution System, with continuous power at the headend. The System shall incorporate safeguards necessary to prevent injury to linemen resulting from a standby generator powering a "dead" utility line.

31.25 **OVERRIDE CAPABILITY**

Each System shall include an emergency alert capability which will permit the Village or its designate, in times of emergency, to override by remote control the audio and/or video of all channels simultaneously under the conditions and in the manner specified in the Franchise Agreement, including those capabilities for alternate broadcast so specified in the Franchise Agreement.

31.26 **INTERCONNECTION**

The System shall be interconnected with other Systems within the Village and adjacent areas whether or not owned by Grantee or another cable operator as may be specified in the Franchise Agreement.

31.27 **SERVICES**

A. Service Provided: The Grantee shall provide, as a minimum, the initial services listed in the Franchise Agreement. Services shall not be reduced without prior notification to Grantor.

B. Basic Cable Service: Basic Cable Service shall include any service tier which includes the retransmission of local television signals. This service shall be provided to all subscribers at the established monthly subscription rates.

C. Local Origination Channels: If local origination programming is provided, the Grantee shall operate any cable casting studios on a high-quality, professional basis for the purpose of providing cable cast programming responsive to local needs and interests.

D. Public, Educational and Government (PEG) Access Facilities: The Grantee shall provide the PEG Access Facilities, including channel capacity, necessary interface equipment and cabling to permit operation as specified in the Franchise Agreement.

E. Cable Channel for Commercial Use: The Grantee shall designate channel capacity for commercial use as required by the Act and applicable federal, state and local laws and regulations.

31.28 **CONSUMER SERVICE STANDARDS**

The Village hereby adopts the customer service standards found in Section 76.309 of the FCC rules, and in addition intends to enforce the service standards found in this Ordinance. Nothing in this Ordinance shall be construed to prevent or prohibit: (i) the Grantor and the Grantee from agreeing to exceed the customer service standards set forth herein; (ii) the Grantor from enforcing, through the franchise term, pre-existing customer service requirements that exceed the requirements set forth herein and are contained in current Franchise Agreements; (iii) the establishment or enforcement of any state or municipal law or regulation concerning customer service or consumer protection that imposes customer service or consumer protection requirements that exceed, or address matters not addressed herein. The Grantee shall provide the necessary facilities, equipment and personnel to comply with the following consumer standards under normal operating

conditions:

A. Service Standards: The Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Scheduled Service Interruptions, insofar as possible, shall be preceded by notice and shall occur during periods of minimum use of the System. A written log or an equivalent, stored in computer memory and capable of access and reproduction, shall be maintained for all Service Interruptions and requests for Cable Service as required by this Ordinance.

B. Telephone Lines: Local toll-free or collect call telephone line capacity shall be made available by Grantee to customers 24 hours per day, seven days a week, including holidays. The Grantee shall use best efforts under normal operating conditions during normal business hours to ensure that a minimum average of 90 percent of all callers (measured on a quarterly basis) for service will not be required to wait more than 30 seconds before being connected to a trained customer service representative, and shall receive a busy signal less than three percent of the time (measured on a quarterly basis). If the call needs to be transferred, the transfer time shall not exceed 30 seconds. Inquiries received after normal business hours may be answered by a service or an automated response system, and such calls must be responded to by a trained company representative on the next business day.

C. Local Office: Grantee shall maintain an office, conveniently located within the Village, open during normal business hours, and adequately staffed to accept subscriber payments.

D. Installation Staff: An installation staff shall install service to any subscriber located up to 150 feet from the existing distribution System within seven days after receipt of a request. This standard shall be met no less than 95 percent of the time, measured on a quarterly basis.

E. Installation, Outages and Service Call Scheduling: Grantee shall schedule, either at a specific time, or at maximum, within a specified four hour time period, all appointments with subscribers for installation or service. Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment. If a Grantee representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer. These standards shall be met no less than 95 percent of the time, measured on a quarterly basis.

F. Repair Standards: The Grantee shall maintain a repair force of technicians who, under normal operating conditions, are capable of responding to subscriber requests for service within the following time frames, not less than 95 percent of the time, measured on a quarterly basis:

1. For System service interruption: under normal operating conditions, within two hours, including weekends, of receiving subscribers calls which by number identify a System Service Interruption of sound or picture on one or more channels, affecting all the subscribers of the System or two percent thereof.
2. For isolated service interruption: within 24 hours, including weekends, of receiving requests for service identifying an isolated Service Interruption (less than two percent of subscribers) of sound or picture for one or more channels. This Standard shall be met no less than 95 percent of the time, measured on a quarterly basis; and
3. For inferior reception quality: within 48 hours, including weekends, of receiving a request for service identifying a problem concerning picture or sound quality.

Grantee shall be deemed to have responded to a request for service under the provisions of this Section when a technician arrives at the service location and begins work on the problem. In the case of a subscriber not being home when the technician arrives, response shall be deemed to have taken place if the technician leaves written notification of arrival.

G. Subscriber Credit for Service Interruption: Upon Service Interruption of Subscriber's Cable Service, the following shall apply:

1. For Service Interruptions of over four hours and less than seven days, the Grantee shall provide, at the subscriber's request, a credit of one-thirtieth (1/30) of one month's fees for affected services for each 24-hour period service is interrupted for four or more hours for all affected subscribers.
2. For interruptions of seven days or more in one month, the Grantee shall provide, at the subscriber's request, a full month's credit for affected services for all affected subscribers.

H. Blocking Devices: Pursuant to federal law, devices capable of blocking channels which the subscriber wishes blocked

shall be available to all subscribers, at cost, upon request by the subscriber.

I. Channels Not Subscribed to by a Subscriber: Any channels not subscribed to by the subscriber must be "scrambled" in such a way to render both the sound and the picture unintelligible.

31.29 **PROOF OF COMPLIANCE**

A. Compliance Records: Grantee shall cooperate with Grantor in verifying compliance with any or all of the operational standards required by this Ordinance.

B. Breach for Non-Compliance: A repeated and verifiable pattern of non-compliance with the consumer protection standards of Section 31.28, after Grantee's receipt of due notice and an opportunity to cure, may be termed a breach of franchise, subject to any and all remedies prescribed in this Ordinance, the Act and applicable federal, state and local laws and regulations. The Grantee shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards in Section 31.28-B unless an historical record of complaints indicates a clear failure to comply.

31.30 **SUBSCRIBER NOTICE**

A. Operating Policies: As subscribers are connected or reconnected to the Cable System, and at least annually, and at any time upon request, and when Grantee's procedures change, under normal operating conditions, the Grantee shall provide each subscriber with written information concerning products and services offered (including channel blocking devices), prices and options for programming services and conditions of subscription to programming and other services, installation and service maintenance policies, instructions on how to use the Cable Services, channel positions of programming carried on the System, the procedures for billing and making inquiries or complaints (including the name, address and local telephone number of the employee or employees or agent to whom such inquiries or complaints are to be addressed) and also furnish information concerning the Grantor office responsible for administration of the franchise including the name and telephone number of the office. The notice shall also indicate Grantee's business hours, legal holidays and procedures for responding to inquiries after normal business hours.

The Grantee shall provide all subscribers and the Grantor written notice no less than 30 days prior to any proposed change in these policies.

B. Rates, Programming Service and Channel Position: The Grantee, under normal operating conditions, shall provide all subscribers and the Grantor with notice of any change in rates,

programming services or channel position at least 30 days prior to the change(s) through announcements on the Cable System and in writing.

C. Billing: All bills shall be clear, concise, understandable and shall include the Grantee's toll free or collect telephone number required under Section 31.28. Bills shall be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills shall also clearly delineate all activity during the billing period, including optional charges, rebates and credits. In case of a billing dispute, the Grantee shall respond to a written complaint from a subscriber within 30 days. Refund checks will be issued promptly, and no later than either (i) the customer's next billing cycle following resolution of the request or 30 days, whichever is earlier, or (ii) the return of the equipment supplied by the Grantee if service is terminated. Credits for service shall be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

D. Copies to Grantor: Copies of all notices provided to subscribers shall be filed concurrently with the Grantor.

31.31 **QUALITY OF SERVICE**

The overall quality of service provided by Grantee to subscribers may be subject to evaluation by Grantor, not less often than once annually. In addition, Grantor may evaluate the quality of service at any time, based upon the number of subscriber complaints received by the Grantee, and the Grantor, and Grantee's response to those complaints. Grantor's evaluation that service quality is inadequate after affording Grantee process as outlined herein may lead to direction to Grantee to cure the inadequacies. Grantee shall commence corrective action within 30 days after receipt of written notice. Failure to do so shall be deemed to be a breach of franchise and subject to the remedies prescribed in this Ordinance. Grantor, after due process, may utilize the performance bond and/or security fund provided for in this Ordinance to remedy any such franchise breach.

31.32 **TENANT'S RIGHTS**

It is Grantor's intent that all residents not be discriminated against in the ability to subscribe to Cable Service. Grantee shall be required to provide service to tenants in individual units of a multiple housing facility with all services offered to other dwelling units within the Service Area, so long as the owner of the facility consents in writing, if requested by Grantee, to the following:

1. Grantee's providing the service to units of the facility;

2. Reasonable conditions and time for installation, maintenance and inspection of the System on the facility premises;
3. Reasonable conditions promulgated by Grantee to protect Grantee's equipment and to encourage widespread use of the System; and
4. No discrimination in rental charges, or otherwise, between tenants who receive Cable Service and those who do not.

31.33 **RIGHTS OF INDIVIDUALS**

A. **Discrimination Prohibited:** Grantee shall not deny service, deny access, or otherwise discriminate against subscribers, PEG access channel users, or general citizens on the basis of income, race, color, religion, national origin, age, gender, marital status or physical or mental disability of an individual or group in an area. Grantee shall comply at all times with the Act and all other applicable federal, state and local laws and regulations, and all executive and administrative orders relating to non-discrimination which are hereby incorporated and made part of this Ordinance by reference. Access should not be denied because of the income of residents in an area.

B. **Equal Employment:** Grantee shall strictly adhere to the equal employment opportunity requirements of federal, state and local law and regulations in effect on the date of the franchise grant, and as amended from time to time.

C. **Personal Information:** The Grantee's policy with regard to personal identifiable information shall be consistent with Federal law.

D. **Equal Accessibility:** The entire System of the Grantee shall be operated in a manner consistent with the principle of fairness and equal accessibility of its facilities, equipment, channels, studios and other services to all citizens, businesses, public agencies and other entities having a legitimate use for the System, and no one shall be arbitrarily excluded from its use.

E. **Discontinuation of Service:**

1. If a subscriber fails to pay any proper fee or charge for any service, the Grantee may discontinue said service, provided that the subscriber has been given no less than 10 days' prior, written notice of the intent to discontinue and such notice was given not less than 30 days after the due date of said fee or charge.

2. If the Grantee receives payment of all outstanding fees and charges, including any late charges, prior to the expiration of the 10th day after receipt transmittal of said notice from the Grantee, then the Grantee shall not discontinue said service. After any service has been discontinued, upon request of the subscriber accompanied by payment in full of all fees or charges due the Grantee and the payment of an appropriate reconnection charge, if any, the Grantee shall promptly reinstate said service.
3. Subscribers and users shall retain the right to deactivate their terminals, but shall continue to be responsible for charges until the Grantee is notified to terminate service.

F. Sexual Harassment: Grantee must have, pursuant to applicable Federal State and local laws and regulations, an anti-sexual harassment policy.

31.34 **CONTINUITY OF SERVICE**

A. Right to Continuous Service: It shall be the right of all subscribers to continue receiving service insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to overbuild, rebuild, modify or sell the System, or the Grantor gives notice of intent to terminate or fails to renew this franchise, the Grantee shall act so as to ensure that all subscribers receive continuous, uninterrupted service. In the event of a change of Grantee, or in the event a new operator acquires the System, the original Grantee shall cooperate with the Grantor, new Grantee or operator in maintaining continuity of service to all subscribers. During such period, Grantee shall be entitled to the revenue for any period during which it operates the System, and shall be entitled to reasonable costs for its services when it no longer operates the System.

B. Right of Grantor to Operate System: In the event Grantee fails to operate the System for seven consecutive days without prior approval of the Grantor or without just cause, the Grantor may, at its option, operate the System or designate an operator until such time as Grantee restores service under conditions acceptable to the Grantor or a permanent operator is selected. If the Grantor is required to fulfill this obligation for the Grantee, then during such period as the Grantor fulfills such obligation, the Grantor shall be entitled to collect all revenues from the System, and the Grantee shall reimburse the Grantor for all reasonable costs or damages in excess of the revenues collected by the Grantor that are the result of the Grantee's failure to perform.

31.35 **IDENTIFICATION OF EMPLOYEES**

Every employee of the Grantee or its agents shall be clearly identified. All employees of Grantee shall display proper identification upon request of a subscriber. Every vehicle of the Grantee shall be similarly identified. The Grantee's telephone number shall also be clearly marked on all such vehicles.

31.36 **RECORDS**

A. Open Books and Records: The Grantee shall manage all of its operations in accordance with a policy of totally open books and records. The Grantor, upon reasonable notice, shall have the right to inspect at any time during normal business hours, all financial records, records, maps, plans, service complaint logs, performance test results and other like materials of the Grantee which relate to the administration of the franchise and are maintained at the local office required by Section 31.29, provided that the Grantor shall maintain the confidentiality of any trade secrets or other proprietary information in the possession of the Grantee and provided further, that records shall be exempt from inspection pursuant to this Section 31.36-A to the extent required by applicable law regarding subscriber privacy and to the extent such records are protected by law against discovery in civil litigation. If any such books or records are not kept by the local office, or upon reasonable request made available to the Grantor, and if the Grantor shall determine that an examination of such records is necessary or appropriate to the performance of any of Grantor's duties, then Grantee shall make such records available locally.

B. Required Records: In any event, the Grantee shall at all times maintain:

1. The complaint file required by Sections 31.29 and 31.45 herein;
2. A full and complete set of plans, records and "as-built" maps showing the exact location of all Cable System equipment installed or in use in the Service Area, exclusive of subscriber service drops.

31.37 **REGULATORY AUTHORITY**

The Grantor shall exercise regulatory authority under the provisions of this Ordinance, the Act and applicable law. If the Service Area served by the Cable System also serves other contiguous or neighboring communities, Grantor may, at its sole option, participate in a joint regulatory agency, with delegated responsibility in the area of cable and related communications.

31.38 **REGULATORY RESPONSIBILITY**

The Grantor, acting alone or acting jointly with other Grantors, may exercise or delegate the following regulatory responsibility:

1. Administering and enforcing the provisions of the Cable Communications System franchise(s);
2. Coordinating the operation of Public, Educational and Government (PEG) Access channel and facilities;
3. Providing technical, programming and operational support to public agency users, such as government departments, schools and health care institutions;
4. Establishing jointly with the Grantee, or as otherwise specified in the Franchise Agreement, procedures and standards for use of channels dedicated to public use and sharing of public facilities, if provided for in any Franchise Agreement;
5. Planning expansion and growth of public benefit Cable Services;
6. Analyzing the possibility of integrating cable communications with other local, regional or national telecommunications networks; and
7. Formulating and recommending long-range telecommunications policy.

31.39 **PUBLIC USAGE OF THE SYSTEM** *Amended, 1997-9*

If so specified in the Franchise Agreement, the Grantor may utilize a portion of the Cable Communication System capacity, and associated facilities and resources, to develop and provide non-commercial Cable Services that will be in the public interest. The Grantee shall reserve at least one channel for public, educational and governmental cable-casting to be provided upon request by the Village. Such channels may be shared with neighboring municipalities upon request by the Grantee and agreement of the Grantor. In furtherance of this purpose, the Grantor may establish a commission, public corporation or other entity to receive and allocate PEG and institutional network facilities, support funds and other considerations provided by the Grantor, the Grantee or others. Such an entity, if established, may be delegated the following responsibilities:

1. Receive and utilize or reallocate for utilization, channel capacity, facilities, funding and other

support provided specifically for PEG and institutional network usage of the Cable Communications System;

2. Establish, jointly with the Grantee, operational procedures and guidelines for PEG and institutional network usage;
3. Review the status and progress of each service developed for public benefit;
4. Reallocate resources jointly with the Grantee on a periodic basis to conform with changing priorities and public needs; and
5. Report to the Grantor and the Grantee annually on the utilization of resources, the new public services developed and the benefits achieved for the Grantor and its residents.

31.40 **RATES**

A. The Grantee shall establish rates for its services which shall be applied on a nondiscriminatory basis in the Service Area, except for commercial and bulk account rates, which are negotiated individually. Pursuant to federal law, the Grantor reserves the right to assume regulation of rates paid by cable subscribers; such rate regulation may be performed by a commission or consortium as advisory to the Village Board in accordance with FCC Rules and Regulations "Part 76, Subpart N." As specified by the FCC's Rules (Part 76, Subpart N), such rate regulation shall cover Basic Service rates and customer premises Installations and equipment rates (including charges for, but not be limited to: converter boxes, remote control units, connections for additional television receivers and other cable home wiring). Grantor reserves the right to further regulate rates pursuant to any additional powers granted it by either the FCC or federal or state law.

B. Rate Regulatory Procedures: In the event that rate regulatory powers are assumed by Grantor, the following shall apply:

1. The Grantor shall notify the Grantee of Grantor's FCC Certification and of Grantor's adoption of rate regulations which are consistent with the FCC regulations and which provide for a reasonable opportunity for consideration of the views of interested parties.
2. Upon receipt of such notification by Grantee, Basic Service regulation shall become effective. Grantee shall be prohibited from raising basic service

rates without the approval of the Cable Commission, and Grantee shall, within 30 days, submit for review its Basic Service, Installation and equipment rates and supporting documentation using either the FCC's Benchmark calculations or the FCC's Cost-of-Service Standards.

C. To aid in the evaluation of the Grantee's proposed rates, the Cable Commission may require the production of proprietary information, and in such cases will apply procedures set forth in FCC regulations (47 C.F.R. Sec. 0.459), and consistent with federal and state law.

D. Refunds: As specified in the FCC Regulations, the Cable Commission may order the Grantee to refund to subscribers that portion of previously paid rates which have been found to be unreasonable. Before ordering the Grantee to refund previously paid rates to subscribers, the Cable Commission must give the Grantee notice and opportunity to comment.

E. Basic Service Rate Increases and Equipment Charges: Subject to FCC rules, the Grantee shall not file for increases in equipment charges and/or Basic Service rates more than once per year. All subsequent requests by the Grantee for increases in equipment changes and/or Basic Service rates shall be subject to the procedures outlined in this Section 31.40.

31.41 **PERFORMANCE REVIEW**

A. At Grantor's sole option, within 90 days of the first anniversary of the effective date of each franchise, and each year thereafter throughout the term of the franchise, the Grantor may hold a public hearing at which the Grantee shall be present and shall participate to review the performance and quality of service of the Cable System. The report required in this Ordinance regarding subscriber complaints, the records of performance tests and the opinion survey reports shall be utilized as the basis for review. In addition, any subscriber may submit comments or complaints during the review meetings, either orally or in writing, and these shall be considered.

B. Performance Report: Within 30 days after the conclusion of the public hearing, Grantor shall issue a report with respect to the adequacy of System performance and quality of service. If inadequacies are proven, Grantor may after providing Grantee due process as outlined herein direct Grantee to correct the inadequacies within a reasonable period of time.

C. Breach Upon Failure to Cure: Failure of Grantee, after due notice, to correct the inadequacies, shall be considered a breach of the franchise, and Grantor may, at its sole discretion, exercise any remedy within the scope of this Ordinance considered

appropriate.

31.42 **SYSTEM REVIEW**

To provide for technological, economic and regulatory changes in cable communications, to facilitate renewal procedures, to promote the maximum degree of flexibility in the Cable System and to achieve a continuing, advanced modern System, the following System and services review procedures are hereby established:

1. At Grantor's sole option, the Grantor may hold a public hearing on or about the third anniversary date of the Franchise Agreement at which the Grantee shall be present and shall participate, to review the Cable Communication System and service. Subsequent System and services review hearing may be scheduled by the Grantor each three years thereafter.
2. Sixty days prior to the scheduled System and service review hearing, Grantee shall submit a report to Grantor indicating the following:
 - a. All Cable System services reported in cable industry trade journals that are being commonly provided on an operational basis, excluding tests and demonstrations, to communities in the State of Illinois with comparable populations, that are not provided to the Grantor.
 - b. Any specific plans for provision of such new services by the Grantee.
 - c. Topics for discussion and review at the System and services review hearing shall include, but shall not be limited to, services provided, feasibility of providing new services, application of new technologies, System performance, programming, subscriber complaints, user complaints, rights of privacy, amendments to the franchise, undergrounding processes, developments in the law and regulatory constraints.
 - d. Either the Grantor or the Grantee may select additional topics for discussion at any review hearing.

31.43 **ANNUAL REPORTS**

Within 120 days after the close of Grantee's fiscal year, the

Grantee may be required to submit a written annual report, in a form requested by the Grantor, including, but not limited to, the following information:

1. A summary of the previous year's (or, in the case of the initial report year, the initial year's) activities in development of the Cable System, including, but not limited to, services begun or discontinued during the reporting year, and the number of subscribers for any service charged for separately.
2. A revenue statement, audited by an independent Certified Public Accountant, or certified by an officer of the Grantee;
3. A statement of projected construction, if any, for the next two years;
4. A list of Grantee's officers, members of its council of directors, and other principals of Grantee;
5. A list of stockholders or other equity investors holding five percent or more of the voting interest in the Grantee and its parent, subsidiary and affiliated corporations and other entities, if any, unless the parent is a public corporation whose annual reports are publicly available.

31.44 **SYSTEM SURVEY REPORTS**

At the Grantor's request, Grantee shall submit to the Grantor an annual System survey report which shall be a survey of the Grantee's plans and a report thereon. Said report shall include, but not be limited to, a description of the portions of the Service Area that have been cabled and have all services available, an appropriate engineering test report or evaluation including suitable electronic measurements conducted in conformity with such requirements. Said report shall be in sufficient detail to enable the Grantor to ascertain that the service requirements and technical standards of the franchise are achieved and maintained.

31.45 **COMPLAINT FILE AND REPORTS**

A. An accurate and comprehensive file shall be kept by the Grantee of any and all complaints regarding the Cable System. A procedure shall be established by the Grantee by the time of Installation of the Cable System to remedy complaints quickly and reasonably to the satisfaction of the Grantor. Complete records of Grantee's actions in response to all complaints shall be kept.

B. A summary of service requests, identifying the number and nature of the requests and their disposition, upon Grantor request, shall be completed for each month and submitted to the Grantor by the tenth day of the succeeding month.

C. A log and summary of all major service outages.

D. At the Grantor's option and expense, the Grantor may prepare the survey form and request its inclusion with a monthly bill to subscribers with the cost of inclusion to be borne by the Grantor. The survey shall request only information over which Grantor has lawful jurisdiction.

31.46 **OTHER REPORTS AND INSPECTIONS**

In addition to other reports or inspections provided by this Ordinance, Grantee shall provide the following reports to or permit the following inspections by Grantor:

1. Federal and State Reports: The Grantee may be required to submit to the Grantor copies of all pleadings, applications, notifications, communications and documents of any kind, submitted by the Grantee to, as well as copies of all decisions, correspondence and actions by, any federal, state and local courts, regulatory agencies and other government bodies relating to its cable television operations within the Service Area. Grantee shall submit such documents to the Grantor no later than 30 days after receipt of a Grantor request.
2. Public Reports: A copy of each of Grantee's annual and other periodic public financial reports and those of its parent, subsidiary and affiliated corporation and other entities, as the Grantor requests, shall be submitted to the Grantor within 30 days after receipt of a request.
3. Inspection of Facilities: The Grantee shall allow the Grantor to make inspections of any of the Grantee's facilities and equipment at any time upon at least 10 days notice, to allow Grantor to verify the accuracy of any submitted report.
4. Public Inspection: All reports subject to public disclosure shall be available for public inspection at a designated Grantor office during normal business hours.
5. Failure to Report: The willful refusal, failure or neglect of the Grantee to file any of the reports

reasonably required herein may be deemed a breach of franchise, and may subject the Grantee to all remedies, legal or equitable, which are available to the Grantor under the franchise or otherwise.

6. False Statements: Any materially false or misleading statement or representation made knowingly and willfully by the Grantee in any report required under the franchise, may be deemed a breach of franchise and may subject the Grantee to all remedies, legal or equitable, which are available to the Grantor under the franchise or otherwise.
7. Cost of Reports: One copy of all reports and records required under this or any other section in this Ordinance shall be furnished at the sole expense of the Grantee.

31.47 **REMEDIES FOR FRANCHISE VIOLATIONS**

If the Grantee fails to perform any material obligation under the franchise, or fails to do so in a timely manner, the Grantor may at its option, and in its sole discretion:

1. Assess against the Grantee monetary damages up to the limits established in the Franchise Agreement for material franchise violations, said assessment to be levied against the security fund if such fund is required by the Franchise Agreement, as provided for in this Ordinance, and collected by Grantor after completion of the procedures specified in Section 31.48. The amount of such assessment shall be deemed to represent liquidated damages actually sustained by Grantor by reason of Grantee's failure to perform. Such assessment shall not constitute a waiver by the Grantor of any other right or remedy it may have under the franchise or under applicable law, including without limitation, its right to recover from Grantee such additional damages, losses, costs and expenses, including actual attorney fees, as may have been suffered or incurred by Grantor by reason of or arising out of such breach of the franchise. This provision for assessment of damages is intended by the parties to be separate and apart from Grantor's right to enforce the provisions of the construction and performance bonds provided for in this Ordinance and is intended to provide compensation to Grantor for actual damages.
2. Terminate the franchise, for any of the causes

stated in this Ordinance.

3. No remedy shall be imposed by Grantor against Grantee for any violation of the franchise without Grantee being afforded due process of law, as provided for in Section 31.48.
4. The fine for certain violations of the franchise shall be as set forth below.
 - a. Failure to furnish, maintain or offer all Cable Services to any potential subscriber within the Village upon order of the Village: \$50.00 per day, for each day that such failure occurs or continues;
 - b. Failure to obtain or file evidence of required insurance, construction bond, performance bond or other required financial security: \$200.00 per day, for each day such failure occurs or continues;
 - c. Failure to provide access to data, documents, records or reports to the Village as required: \$100.00 per day, for each day such failure occurs or continues;
 - d. Failure to comply with applicable construction, operation, or maintenance standards: \$300.00 per day, for each day such failure occurs or continues.
 - e. Failure to comply with a rate decision or refund order: \$500.00 per day, per violation, for each day such violation occurs or continues.

Grantor may impose any or all of the above enumerated measures against Grantee for specific violations, which shall be in addition to any and all other legal or equitable remedies it has under the franchise or under any applicable law.

31.48 **PROCEDURE FOR REMEDYING FRANCHISE VIOLATIONS**

In the event that the Grantor has reason to believe that the Grantee has violated any material provision of the franchise, the Grantor may make a written demand on the Grantee stating the exact nature of the alleged violation, and requesting that Grantee remedy such violation or provide evidence that such violation did not occur. If the violation is not remedied, or is not in the process of being remedied or Grantee fails to prove the violation untrue, to the satisfaction of the Grantor within 30 days following such

demand, the Grantor shall determine whether or not such violation by the Grantee was excusable, in accordance with the following procedures:

1. An administrative hearing shall be conducted by the Village to review the alleged violation. If this hearing does not result in a satisfactory resolution, and the Grantee requests a public hearing, then a public hearing shall be conducted by the Board of Trustees or its designee and the Grantee shall be provided with an opportunity to be heard upon 30 days written notice to the Grantee of the time and place of the hearing provided and the allegations of Franchise violations. *Amended, 1997-9*
2. If, after notice is given and, at the Grantee's option, a full public proceeding is held, the Grantor determines that such violation by the Grantee was excusable as provided in Section 31.49 herein, the Grantor shall direct the Grantee to correct or remedy the same within such additional time, in such manner and on such terms and conditions as the Grantor may reasonably direct.
3. If, after notice is given and, at the Grantee's option, a full public proceeding is held, the Grantor determines that such violation was inexcusable, then the Grantor may impose the remedies in accordance with this Chapter 31. *Amended, 1997-9*

31.49 **EXCUSE OF NONPERFORMANCE**

In the event Grantee's performance of any of the terms, conditions, obligations or requirements of the franchise is prevented or impaired due to any cause beyond its reasonable control or not reasonably foreseeable, such inability to perform shall be deemed to be excused and no penalties or sanctions shall be imposed as a result thereof, provided Grantee has notified Grantor within a reasonable time after Grantee's discovery of the occurrence of such an event. Such causes beyond Grantee's reasonable control or not reasonably foreseeable shall include, but shall not be limited to, Acts of nature and civil emergencies.

31.50 **CONSTRUCTION BOND**

A. Requirement of Bond: Within 30 days after the granting of a new franchise, or a renewal which requires significant System construction, and prior to the commencement of any construction work by the Grantee, the Grantee shall file with the Grantor a construction bond in the amount specified in the Franchise Agreement in favor of the Grantor and any other person who may

claim damages as a result of the breach of any duty by the Grantee assured by said bond.

B. Form of Bond: Such bond as contemplated herein shall be in the form approved by the Grantor and shall, among other matters, cover the cost of removal of any properties installed by the Grantee in the event said Grantee shall default in the performance of its franchise obligations.

C. No Limitation on Liability: In no event shall the amount of said bond be construed to limit the liability of the Grantee for damages.

D. Waiver of Bond: Grantor, at its sole option, may waive this requirement, or permit consolidation of the construction bond with the performance bond and security fund specified, respectively in Sections 31.51 and 31.52.

E. Release of Bond: Upon completion of construction, any construction bonds then in force shall be released.

31.51 **PERFORMANCE BOND**

A. Requirement of Bond: In addition to the construction bond set forth in Section 31.50, Grantee may be required, at least 30 days prior to the commencement of operation, to file with the Grantor a performance bond in the amount specified in the Franchise Agreement in favor of the Grantor and any other person who may be entitled to damages as a result of any occurrence in the operation or termination of the Cable System operated under the Franchise Agreement, and including the payment required to be made to the Grantor hereunder.

B. Bond Form: Such bond as contemplated herein shall be in the form approved by the Grantor.

C. No Limitation of Liability: In no event shall the amount of said bond be construed to limit the liability of the Grantee for damages.

31.52 **SECURITY FUND**

A. Requirement of Fund: Within 30 days after the effective date of the franchise, the Grantee may be required to deposit into a bank account established by the Grantor, and maintain on deposit through the term of this franchise, the sum specified in the Franchise Agreement, as security for the faithful performance by it of all the provisions of the franchise, and compliance with all the orders, permits and directions of any agency of the Grantor having jurisdiction over its acts or defaults under this Ordinance, and the payment by the Grantee of any claims, liens and taxes due the Grantor which arise by reason of the construction, operation or

maintenance of the System.

Subject to the provisions of Section 31.52-D herein, the security fund may be assessed by the Grantor for purposes including, but not limited to, the following:

1. Failure of Grantee to pay Grantor sums due under the terms of the franchise.
2. Reimbursement of costs borne by the Grantor to correct franchise violations not corrected by Grantee after due notice.
3. Monetary remedies or damages assessed against Grantee due to default or violation of franchise requirements.

B. Form of Fund: At Grantor's sole option, some portion of the security fund may be provided in the acceptable form of an irrevocable letter of credit, in lieu of a cash deposit.

C. Deposits to Fund: Within 30 days after notice to it that any amount has been withdrawn by the Grantor from the security fund, pursuant to Section 31.52-A herein, the Grantee shall deposit a sum of money sufficient to restore such security fund to the amount required by the Franchise Agreement.

D. Withdrawals from Fund: If the Grantee fails, after 30 days written notice to pay to the Grantor any Franchise Fee or taxes due and unpaid, fails to pay to the Grantor within such 30 days, any damages, costs or expenses which the Grantor shall be compelled to pay by reason of any act or default of the Grantee in connection with the franchise fails after 30 days notice of such failure by the Grantee to comply with any material provision of the franchise which the Grantor reasonably determines can be remedied by an expenditure of the security fund, the Grantor may thereafter withdraw the amount thereof, with interest and any penalties, from the security fund. Upon such withdrawal, the Grantor shall notify the Grantee of the amount and date thereof.

E. Rights to Fund: The security fund deposited pursuant to this Section 31.52 shall become the property of the Grantor in the event that the franchise is revoked for cause by reason of the default of the Grantee in accordance with the procedures of this Ordinance. The Grantee, however, shall be entitled to the return of such security fund, or portion thereof, as remains on deposit no later than 90 days after the expiration of the term of the franchise provided that there is then no outstanding default on the part of the Grantee. The Grantee shall be entitled to any interest accrued on the cash portion of the security fund.

F. Rights of Grantor: The rights reserved to the Grantor

with respect to the security fund are in addition to all other rights of the Grantor whether reserved by this Ordinance or authorized by law, and no action, proceeding or exercise of a right, with respect to such security fund shall constitute an election of remedies or a waiver of any other right the Grantor may have.

31.53 WORK PERFORMED BY OTHERS

A. A Grantee shall give prior notice to the Village specifying the names and addresses of any entity, other than the Grantee, that performs construction services in excess of \$10,000 pursuant to the franchise, provided, however, that all provisions of the franchise remain the responsibility of the Grantee.

B. All provisions of a franchise shall apply to any subcontractor or others performing any work or services pursuant to the provisions of the franchise.

C. Nothing in this Section 31.53 shall be construed as allowing the transfer of any rights or responsibilities of the Grantee without approval of the Village in writing.

31.54 GRANTEE INSURANCE

A. Insurance Required: The Grantee shall maintain throughout the term of the franchise, insurance in amounts at least as follows:

1. Worker's Compensation: Workers' Compensation with Coverage A at statutory limits and Coverage B at limits of \$1,000,000/ \$1,000,000/ \$1,000,000. Insurance shall cover the employees of the Grantee in compliance with the State of Illinois and all other states having jurisdiction over each employee.
2. Comprehensive General Liability: Comprehensive General Liability including Premises/Operations; Products/Completed Operations; Broad Form Property Damage; Contractual Liability; Coverage for Explosion, Collapse and Underground Hazards; and Pollution Control Liability shall include limits of not less than \$1,000,000 for bodily injury (including death) and property damage for each occurrence and not less than \$2,000,000 in the aggregate.
3. Comprehensive Automobile Liability: Comprehensive Automobile Liability including owned, non-owned and hired vehicles with limits of not less than \$1,000,000 for bodily injury (including death) and

property damage for each occurrence.

4. Umbrella Liability: Umbrella Liability with limits of not less than \$10,000,000 and shall carry the following endorsement: "It is hereby understood and agreed that despite anything to the contrary where underlying insurance, as described herein, provides greater protection or indemnity to the insured than the terms and conditions of this policy, this insurance shall pay on behalf of the insured the same terms, conditions and coverages which apply to the basic underlying insurance. Where no such broader underlying insurance exists, this policy shall pay on behalf of the insured upon terms and conditions and limitations of the carrier's umbrella excess policy."

B. Certificates to Grantor: The Grantee shall furnish the Grantor with copies of such insurance policies or certificates of insurance within 45 days of the effective date of the Franchise Agreement. Certificates of insurance shall be furnished by the Grantee to the Grantor annually thereafter.

C. Grantor as Additional Insured: Such insurance policies provided for herein shall name the Grantor, its officers, boards, commissions, agents and employees as additional insured, and shall be primary to any insurance carried by Grantor, and shall contain the following endorsement:

"It is hereby understood and agreed that this insurance policy may not be canceled by the surety or the intention not to renew be signed by the surety until 30 days after receipt by the Village by registered mail of written notice of such intention to cancel or not to renew."

D. No Limitation on Liability: The minimum amounts set forth in the Franchise Agreement for such insurance shall not be construed to limit the liability of the Grantee to the Grantor under the franchise issued hereunder to the amount of such insurance.

E. Approved Insurers: All insurance carriers providing coverage under Section 31.54-A herein, shall be duly licensed to operate in the State of Illinois.

31.55 **INDEMNITY**

A. Extent of Indemnity: The Grantee shall, by acceptance of any franchise granted, indemnify, defend and hold harmless the Grantor, its officers, boards, commissions, agents and employees from any and all claims, suits, judgments, for damages or other relief, costs and attorney's fees in any way existing out of or

through or alleged to arise out of or through:

1. The act of the Grantor in granting the franchise.
2. The acts or omissions of Grantee, its servants, employees or agents including, but not limited to, any failure or refusal by Grantee, its servants, employees or agents to comply with any obligation or duty imposed on Grantee by this Ordinance or the Franchise Agreement.
3. The exercise of any right or privilege granted or permitted by this Ordinance or the Franchise Agreement.

Such indemnification shall include, but not be limited to, all claims arising in tort, contract, infringements of copyright, violations of statutes, ordinances or regulations or otherwise.

B. Defense of Claims: In the event any claims shall arise, the Grantor or any other indemnified party shall tender the defense thereof to the Grantee. Provided, however, that the Grantor or other indemnified party in its sole discretion may participate in the defense of such claims at Grantee's sole expense, and in such event, such participation shall not relieve the Grantee from its duty or defense against liability or of paying any judgment entered against such party. Grantee shall not agree to any settlement of claims without Grantor approval.

C. Grantor's Negligence: The Grantee shall not be required to indemnify the Grantor for negligence or willful misconduct on the part of Grantor's officials, boards, commissions, agents or employees.

31.56 **ALTERNATIVE REMEDIES**

No provision of this Ordinance shall be deemed to bar the right of the Village to seek or obtain judicial relief from a violation of any provision of the franchise or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this Ordinance, nor the exercise thereof, shall be deemed to bar or otherwise limit the right of the Village to recover monetary damages, (including all dispute related expenses such as attorneys' fees and except where liquidated damages are otherwise prescribed) for such violation by the Grantee, or judicial enforcement of the Grantee's obligations by means of specific performance, injunctive relief or mandate, or any other judicial remedy available at law or in equity. All judicial action sought for a violation of any provision of the franchise or any rule, regulation, requirement or directive promulgated thereunder shall be commenced in the Circuit Court of McHenry County or the Northern District of Illinois,

Western Division.

31.57 **NONENFORCEMENT**

Subject to the provisions of the Act, a Grantee shall not be relieved of any obligation to comply with any of the provisions of the franchise or any rule, regulation, requirement or directive promulgated thereunder by reason of any failure of the Village or its officers, agents or employees to enforce prompt compliance nor shall such be considered a waiver thereof.

31.58 **COMPLIANCE WITH LAW**

Notwithstanding any other provisions of the franchise to the contrary, the Grantee shall at all times comply with all laws and regulations of the state and federal government or any administrative agencies thereof, and, to the extent that federal law does not control, shall comply with any and all controlling laws of the State of Illinois. Provided, however, if any such state or federal law or regulation shall require the Grantee to perform any service, or shall permit the Grantee to perform any service, or shall prohibit the Grantee from performing any service, in conflict with the terms of the franchise or any law or regulation of the Grantor, then as soon as possible following knowledge thereof, the Grantee shall notify the Grantor of the point of conflict believed to exist between such regulation or law and the laws or regulations of the Grantor or the franchise.

31.59 **UNAUTHORIZED RECEPTION, USE OR SALE OF CABLE SERVICES**

A. It shall be unlawful for any person to lawfully obtain any cable signal or service from a Grantee and to resell such cable signal or service without the prior written consent of such Grantee.

B. It shall be unlawful for any person to intercept, descramble, decode, or receive or assist in the interception, descrambling, decoding or receiving of any cable signal or service of a Grantee without the prior written consent of Grantee. As used in this Section 31.59-B, "assist in interception, descrambling, decoding or receiving" shall include the manufacture or distribution of equipment intended by the manufacturer or distributor for unauthorized reception of cable signal or service.

C. It shall be unlawful for any person to intentionally damage any cables, lines or equipment of any Grantee used in or for the purpose of transmitting cable signals or service.

D. It shall be unlawful for any person to obtain cable signals or service from any Grantee by means of fraud, deceit or theft.

31.60 **WAIVER OR EXEMPTION**

The Village reserves the right to waive provisions of this Ordinance, or exempt a Grantee from meeting provisions of this Ordinance, if the Village determines such waiver or exemption is in the public interest.

31.61 **SECTION TITLES**

The section titles appearing in this Ordinance are used solely for convenience and are not intended to affect the meaning of this

Ordinance.